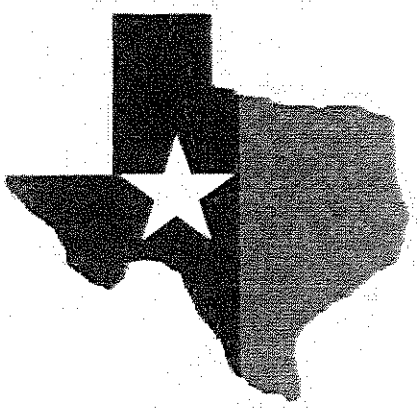
A Guide to the Admission, Review, and Dismissal Process



Introduction

The Individuals with Disabilities Education Act of 2004 (IDEA) is the federal law that governs the special education process. The term "special education" means specially designed instruction to meet the unique needs of a child with a disability. Under the IDEA, parents are given a large level of participation at every stage of the process. This resource guide is designed to give you, as the parent of a child who may be eligible for special education services, a better understanding of the special education process and of your procedural rights and responsibilities so that you will be able to fully participate in the decision-making process regarding your child's education.

This guide describes various activities that may take place during the special education process such as early intervention activities, determination of eligibility for special education, development of a child's individualized education program (IEP) and dismissal from special education.

This guide will be updated as changes to the federal and state special education requirements occur. An electronic version will be updated regularly and may be found on the Region 18 Education Service Center web page in *The Legal Framework for the Child-Centered Special Education Process* at http://framework.esc18.net/. The printable version can also be found at this link.

The Legal Framework for the Child-Centered Special Education Process is a template in an electronic format that summarizes state and federal requirements for special education by topic. Parents and schools may use this template which is located at http://framework.esc18.net/ as a reference in managing the special education system's procedures.

Acknowledgements

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A GUIDE TO THE ADMISSION, REVIEW, AND DISMISSAL (ARD) PROCESS

Early Childhood Intervention

The IDEA supports families through screening, evaluation and early intervention services for infants and toddlers with disabilities. With early identification and assistance a child who is late in meeting developmental milestones may sometimes catch up with his or her peers.

In Texas, the Department of Assistive and Rehabilitation Services (DARS) helps children under three years of age who have developmental delays. The program is called Early Childhood Intervention (ECI) and provides services for qualifying infants and toddlers and their families. Services include screening and evaluation, programming, service coordination, and transition services, as needed. More information about the DARS can be found at http://www.dars.state.tx.us/ecis/index.shtml.

At least 90 calendar days before a toddler receiving ECI turns 3 years old, a meeting will be scheduled to help the family transition from ECI services to special education services, if appropriate. Not all children served by the ECI program will qualify for special education services. If the child does qualify, special education services must be made available to the child on his or her third birthday. For more information, a free publication entitled *Beyond ECI* is available to you at http://www.dars.state.tx.us/ecis/publications/EngTransition.pdf (English) and at http://www.dars.state.tx.us/ecis/publications/SpanishTransition.pdf (Spanish).

How to Get Help for the School-Aged Child

If you have concerns about your child's learning or behavior, the first step is to talk to your child's teacher or the school principal about your concerns. If this step is unsuccessful, you should ask your child's teacher, principal, or counselor about making a referral to the campus-based student support team, which is a team of teachers, and other personnel who meet regularly to address any learning or behavioral concerns that children are having. It is the goal of the school and these teams to identify struggling learners early in order to improve their educational outcomes. Before a referral for a special education evaluation, state law requires that your child be considered for all support services available to all children. These services may include, but are not limited to: tutoring, remedial services, compensatory services, response to scientific, research-based intervention, and other academic or behavior support services.

Response to Intervention

The federal No Child Left behind Act of 2001 and IDEA direct schools to focus more on helping all children learn by addressing problems early. Both laws stress the importance of providing high quality, scientific, research-based instruction and interventions, and holding schools accountable for the progress of all children in terms of meeting grade-level standards. This approach is called response to intervention (RtI), and the goal of the process is to identify children who are at risk for not meeting grade-level standards and to intervene early.

Many schools implement activities associated with RtI. The screening process for identifying children who are at risk may vary from school to school. The basic elements of an RtI approach are: the provision of scientific, research-based instruction and interventions in the general education classroom; monitoring and measurement of the child's progress in

response to the interventions; and use of these measures of progress to make educational decisions.

The RtI approach includes a multi-leveled system of interventions in which each level (or tier) represents an increasingly intense level of services. Interventions that are provided to a child will be continually adjusted based on progress monitoring until the child is progressing adequately. Children, who do not respond to the initial interventions within a reasonable period of time, as suggested by research, are referred for more intensive interventions. Most RtI models have three tiers of interventions.

A school that implements an RtI system still has an obligation to identify children with disabilities. Parents, teachers, or anyone else can request a referral at any time regardless of whether the child is receiving interventions through an RtI system. A child does not need to advance through the multi-tiers of the RtI system before a referral is made. In certain circumstances a child may have progressed through multiple tiers without success. In this situation a disability should be suspected and a referral must be made. A school may continue interventions that have already been initiated while processing the referral and determining whether or not the child should be evaluated for special education services within required timelines. If a parent makes a referral for a special education evaluation and the school does not suspect a disability or a need for special education services, the school may refuse to evaluate. However, when the school refuses a parent's request for an evaluation, the school must give the parent prior written notice of its refusal to evaluate.

One benefit of an RtI approach is that it enables children to receive help promptly within the general education setting. In addition, an RtI approach may potentially reduce the number of children referred for special education services because it helps to differentiate between children whose achievement problems are due to issues such as a lack of prior instruction from children whose problems are due to a learning disability. More information about RtI can be found at http://www.tea.state.tx.us/index2.aspx?id=2147500224 and http://www.tea.state.tx.us/index2.aspx?id=5817.

Referral for a Full and Individual Evaluation

If your child continues to experience difficulty in the general classroom after interventions are provided, school personnel may refer your child for a Full and Individual Evaluation (FIE) for special education services. A referral for an FIE for special education services may be initiated by you, school personnel, or by another person involved in the education or care of your child. If you request an evaluation for special education services and the school determines that an evaluation is not needed, the school must give you prior written notice of its decision not to evaluate your child. The Texas Project First website at http://www.texasprojectfirst.org/SEProcessStep.html provides detailed information and resources regarding the referral process.

Once your consent is given for an FIE, the school will conduct an FIE of your child in all areas of suspected disability. The child between the ages of 3 through 21 (except as noted) must meet the criteria for one or more of the disability categories listed below to be eligible for special education services.

- auditory impairment (AI) (from birth)
- autism
- deaf-blindness (from birth)
- emotional disturbance
- intellectual disabilities

- multiple disabilities
- noncategorical early childhood ages three through five
- orthopedic impairment
- other health impairment
- specific learning disability
- speech or language impairment
- traumatic brain injury
- visual impairment (VI) (including blindness from birth)

A school has a duty to make a referral for an FIE for special education services any time it suspects that a child has a disability and a need for special education services under the IDEA.

The FIE and the resulting report must be completed no later than 60 calendar days from the day the school receives your signed, written consent. A timeline is available in Appendix A of this document.

Prior Written Notice

You have the right to receive written notice about a school's actions concerning your child's special education before the school actually takes the action. A school must give you prior written notice when it:

- proposes to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child (including a change prompted by your revocation of consent for the continued provision of special education and related services), or
- Refuses to initiate or change the identification, evaluation, educational program, or educational placement of your child or the provision of a FAPE to your child.

Prior written notice must be given at least five school days in advance of the action(s) that the school proposes or refuses to take. The school must provide the prior written notice regardless of whether you agreed to the change or requested the change.

Parental Consent

There are certain activities under the IDEA that cannot take place unless the school obtains your consent. The school must fully inform you of all the information needed to be able to make a good decision including a description of the proposed activity. The information must be in your native language or other mode of communication. If there are records to be released, the school must list the records and to whom they will be released.

When you give consent it means that you understand and agree in writing for the school to carry out the activity for which consent is sought. It is important that you understand that the consent is voluntary and may be revoked at any time prior to the activity taking place. However, if you revoke consent for an activity, it is not retroactive.

Consent for Initial Evaluation

The school must get your consent in order to conduct an FIE for possible special education services. Informed parental consent means that you understand and agree in writing to allow the school to test your child.

If you do not consent to the initial evaluation, the school may, but is not required to, pursue the evaluation by asking for mediation or requesting a due process hearing. If the school

decides not to ask for mediation or to request a due process hearing to override your refusal to consent to the evaluation of your child, the school does not violate Child Find requirements under the IDEA. Child Find refers to state-developed policies and procedures which ensure that all children with disabilities residing in Texas, regardless of the severity of their disabilities, who are in need of special education and related services are identified, located, and evaluated.

Eligibility

There is a two-part test for determining whether your child is eligible for special education services: (1) your child must have a disability, and (2) as a result of the disability, your child must need special education services to benefit from education. In Texas an ARD committee makes decisions about eligibility. You are a member of the committee. Within 30 calendar days of completing the FIE, the ARD committee must meet to review the written evaluation report and determine whether your child is eligible for special education services. If the 30th day falls during the summer and school is not in session, the ARD committee has until the day classes begin in the fall to finalize decisions concerning the initial eligibility determination, the IEP, and placement; unless the FIE indicates that the child will need extended school year (ESY) services during that summer. A copy of the evaluation report must be given to you at no cost.

As explained in the section on Response to Intervention, not all struggling learners have a disability. If the child's problems are primarily from a lack of appropriate instruction in reading or math or due to the fact that the child has limited English proficiency, the child is not eligible for special education services. In these situations the campus-based support team may meet and recommend other services or programs in general education to help the child. In an RtI process, the campus-based support team may recommend additional interventions available to children without disabilities.

If the evaluation shows that your child has a disability, the ARD committee must then decide whether your child needs special education services to benefit from education. If your child does not have an educational need for special education services, he or she is not eligible for any such services.

Consent for the Initial Provision of Services

If you consented to an initial evaluation of your child, you did not also consent to the initial provision of services at that time. Parental consent to initiate special education and related services must be obtained if it is determined through the process discussed above that your child qualifies for special education and related services.

The school must make reasonable efforts to obtain your informed consent for the initial provision of special education and related services to your child. If you do not consent to the initial provision of special education and related services, the school may not ask for mediation or request a due process hearing to override your refusal to consent to services. No special education and related services will be provided if you refuse consent.

Revocation of Consent for Services

Just as you have the authority to consent to the initial provision of special education and related services, you have the authority to revoke your consent for services. Your revocation of consent must be in writing. Once the school receives your written revocation it must honor your decision. However, before the school discontinues services, it must provide you with prior written notice that services will cease. This prior written notice must

be given to you a reasonable time before the school discontinues services. Although the school must discontinue services, the school is not required to amend your child's education records to remove any references to your child having received special education and related services in the past.

If you revoke your consent for the continued provision of special education and related services, your child will be considered a general education child. If consent is revoked, the school is not required to convene an ARD committee meeting or develop an IEP for your child for further provision of services. The school will no longer be required to provide accommodations that were previously included in your child's IEP. The school will not be considered to be in violation of the IDEA requirement to make a FAPE available to your child because of the failure to provide your child with further special education and related services. Additionally, if consent is revoked your child is not entitled to the protections of the IDEA relating to discipline.

If you revoke your consent for the continued provision of special education and related services:

- the school may not use the mediation process to try to obtain an agreement that services may continue to be provided to your child, and
- the school may not use the due process hearing procedures to challenge your decision.

Consent for Reevaluation

Once your child begins receiving special education and related services, periodic reevaluations are required. The school must make reasonable efforts to obtain your consent for a reevaluation. If you fail to respond despite reasonable efforts, the school may conduct a reevaluation without your consent.

If you refuse consent for reevaluation of your child, the school may, but is not required to ask for mediation or request a due process hearing to override your lack of consent for reevaluation. The school does not violate its Child Find obligation or its obligation to evaluate your child if the school does not ask for mediation or request a due process hearing.

Reevaluation

A reevaluation is similar to the FIE. The reevaluation must be comprehensive enough to determine whether your child continues to be a child with a disability and needs special education services. Unless you and the school agree otherwise, a reevaluation of your child's needs must be done at least every three years. No more than one reevaluation may occur within a year unless you and the school agree.

Review of Existing Evaluation Data

A review of existing evaluation data (REED) must take place as part of an initial evaluation, if appropriate, and as part of any reevaluation of a child under the IDEA. The REED must be conducted by the members of the ARD committee, including you, but it does not have to take place in a meeting. The members must review existing evaluation data about your child, including information you provide, to determine the scope of the evaluation.

If your child has already been receiving special education and related services, the members decide what additional assessment, if any, is needed to determine whether additions or modifications will be made to your child's special education and related services.

If the members decide that additional assessment is not needed for your child to be fully evaluated, the reasons for this decision must be explained to you. After explaining the reasons why the members have concluded that existing evaluation data are sufficient, the school does not have to conduct a new assessment to complete a required evaluation unless you request that the school do so.

Independent Educational Evaluation

If you disagree with an evaluation by the school, you may request an independent educational evaluation (IEE) at school expense. The school must give you information about where an IEE may be obtained and must give you a copy of the school's criteria for obtaining an IEE. The IEE must meet school criteria. The criteria will likely include the location of the evaluation and the qualifications of the examiner.

If you request an IEE at school expense, the school must either pay for this evaluation or request a due process hearing to show that its evaluation is appropriate. You are entitled to only one IEE at public expense each time the school conducts an evaluation. If the school requests a due process hearing and the hearing officer decides that the school's evaluation is appropriate, you still have the right to an IEE, but not at the school's expense. Information obtained from an IEE that meets school criteria must be considered by the ARD committee with respect to the provision of a FAPE regardless of whether the school pays for the IEE.

Admission, Review, and Dismissal Committee

The ARD committee must meet at least once a year to review your child's IEP and determine whether the annual goals are being met. The school must invite you (or your child if he or she is an adult) to participate as a member of the ARD committee by providing prior written notice. The ARD committee may meet more often than annually to revise your child's IEP, as appropriate, to address:

- any lack of expected progress toward the annual goals and in the general curriculum,
- the results of any reevaluation,
- information about the child provided to, or by, the parents, and
- anticipated needs of the child, or
- other matters.

You may request an ARD committee meeting (at a mutually agreeable time) at any time to discuss educational concerns such as placement, IEP goals and objectives, and the extent of services being provided to your child. The school must either grant your request to have a meeting or contact the TEA to ask for assistance through mediation. Information regarding the ARD committee can be found at http://www.texasprojectfirst.org/ARDIEP.html.

Amendment to the Individualized Education Program without a Meeting

After the annual ARD committee meeting has taken place, you and the school may agree to make changes to the IEP without a meeting. However, changes to eligibility determination, changes in placement, and manifestation determination review (MDR) must be made in an ARD committee meeting.

If an IEP is changed outside of an ARD committee meeting, there must be a written document reflecting the agreed upon changes. Upon request, the school must provide you

with a copy of the revised IEP with the amendments incorporated. Additionally, the school must ensure that the child's ARD committee is informed of those changes.

Membership

The ARD committee members include the following:

- you, the parent,
- at least one regular education teacher of the child,
- at least one special education teacher or provider of the child,
- a representative of the school,
- a person who can interpret the instructional implications of the evaluation results,
- the child, if appropriate, including whenever transition services will be addressed,
- other individuals who have knowledge or special expertise regarding the child and are invited by either you or the school, and
- if applicable:
    - a certified teacher for the child with a suspected or documented AI,
    - a certified teacher for the child with a suspected or documented VI,
    - an AI certified teacher and a VI certified teacher for the child with suspected or documented deaf-blindness,
    - a career and technical education representative for the child who is being considered for initial or continued placement, or
    - a language proficiency assessment committee representative for a child who is a child with limited English proficiency.

Additionally, when transition services are addressed, to the extent appropriate, with your written consent or with the written consent of the adult student, the school must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

Adult Student

At least a year before your child reaches the age of majority under state law (i.e., age 18), the IEP must include a statement that your child has been informed of his or her rights under the IDEA, if any, that will transfer to him or her on reaching the age of majority. Unless your child is determined to be incompetent under state law and you are appointed as the guardian, your rights under the IDEA will transfer to your adult child at age 18 except that all notices required by the IDEA must be given to both you and your adult child. However, these notices are not an invitation for you to attend meetings. You may only attend meetings if your adult child invites you or gives the school permission to invite you.

Excusing Members from Attending the Meeting

The regular education teacher, the special education teacher or provider, the representative of the school, and the person who can interpret the instructional implications of the evaluation results may be excused from attending part or all of the ARD committee meeting when the person's attendance is not necessary because the person's area of the curriculum or related service is not being modified or discussed in the meeting. For the excusal to occur you must agree in writing that the person's attendance is not necessary because the person's area of the curriculum or related service is not being modified or discussed in the meeting.

A member of the ARD committee may also be excused from attending an ARD committee meeting when the meeting involves a modification to, or discussion of, the member's area of curriculum or related service if:

- you and the school consent to the excusal,
- the consent is in writing,
- the person being excused submits written input into the development of the IEP to you and the rest of the ARD committee, and
- the written input is submitted before the meeting.

Scheduling the Meeting

The school must invite you to each ARD committee meeting for your child and make efforts to ensure one or both parent's participation. Written notice of the meeting must be given to you at least five school days before the meeting, unless you agree otherwise. The written notice must include the purpose, time, location of the meeting, and a list of who will be attending the meeting.

The ARD committee meeting must be at a time and place agreeable to you and the school. If the time or date the school proposes is not convenient for you, the school must make reasonable efforts to find a time that you are able to meet. If neither parent can attend the meeting, you may participate through alternative means such as through telephone or videoconferencing. If the school is unable to convince you to attend, then the school can conduct the meeting without you.

Individualized Education Program

If your child qualifies under the IDEA, the school is required to provide a FAPE in the least restrictive environment (LRE). This is accomplished through the ARD committee's development of an IEP, and the school's implementation of the IEP. The TEA has developed a model form that is clear, concise, well organized, and understandable to parents and educators for use in developing an IEP. Your child's school may use this model form for developing the IEP found at http://www.tea.state.tx.us/index2.aspx?id=2147504486.

In developing the IEP, there are several things the ARD committee must consider, including:

- strengths of your child,
- your concerns for enhancing the education of your child,
- results of the most recent evaluation of your child, and
- academic, developmental, and functional needs of your child.

In addition, the ARD committee must address special factors for some children, as follows:

- consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior when a child's behavior impedes learning,
- consider the language needs of the child as those needs relate to the child's IEP when the child qualifies as a child with limited English proficiency,
- provide for instruction in Braille and the use of Braille, unless the committee determines that instruction in Braille or the use of Braille is not appropriate for the child when the child is blind or visually impaired,
- consider the communication needs of the child, and for the child who is deaf or hard of hearing, the ARD committee must further consider:
    - the child's language and communication needs,

    - the child's opportunities for direct communications with peers and professional personnel in the child's language and communication mode,
    - the child's academic level, and
    - the child's full range of needs, including opportunities for direct instruction in the child's language and communication mode, and
- consider whether the child needs assistive technology devices and services.

Agreement/Disagreement

A decision of the ARD committee concerning the required elements of the IEP must be made by mutual agreement of the members if possible. This mutual agreement is called "consensus". The ARD committee should work toward consensus, but the school has the ultimate responsibility to ensure that the IEP includes the services that your child needs in order to receive a FAPE. It is not appropriate to make ARD committee decisions based upon a majority "vote". If there is disagreement, the IEP must state the basis for any disagreement. Members who disagree are given the opportunity to write their own statements.

When you disagree with the decisions of the ARD committee, you will be offered a single opportunity to have the committee recess for a period of time not to exceed 10 school days. If you accept the offer to recess and reconvene, before recessing the meeting, the members are to agree to a date, time, and place for reconvening the meeting. However, if your child's presence on the campus presents a danger of physical harm to your child or others, or if your child has committed an expellable offense or an offense which may lead to a placement in an alternative education program, you will not be entitled to a recess even though you may disagree with the decisions of the ARD committee.

During a recess, the members are encouraged to consider alternatives, gather additional information, prepare further documentation, and seek out additional resource persons to aid in resolving the disagreement. If the ARD committee meets again and you continue to disagree, unless the disagreement involves the initial provision of services for which consent is required, the school must implement the IEP that the school has decided is appropriate for your child. When a school implements a program with which you disagree, at least five school days prior to implementation, the school must provide you with prior written notice that it will implement the IEP.

The ARD committee may recess for reasons other than failure to reach agreement about all required elements of the IEP.

Present Levels of Academic Achievement and Functional Performance

The IEP must contain a statement of present levels of academic achievement and functional performance of your child. This statement must include how the disability affects involvement and progress in the general curriculum. If your child is a preschool child, the statement must explain how the disability affects participation in activities appropriate to the age of the child. For more information, visit the following websites http://texasprojectfirst.org/PLAAFP!.html and http://portal.esc20.net/portal/page/portal/esc20public/SpecialEducation/AGCHome/AGCStatewideLeadership.

Annual Goals

The IEP must contain measurable annual goals designed to meet your child's needs resulting from the disability so that he or she can be involved and progress in the general curriculum. These goals must also address other educational needs that result from your child's disability. The IEP must describe how your child's progress towards the annual goals will be measured as well as when the progress reports will be provided to you.

Special education information as well as a free training on writing standard-based IEPs by Region 20 Education Service Center is available on *iLearning* at http://portal.esc20.net/portal/page/portal/esc20public/workshop.

To participate in this on-line training you will find step-by-step directions for registration at http://portal.esc20.net/pls/htmldb/wwv_flow_file_mgr.get_file?p_security_group_id=50721415077700 7&p_fname=iLearning End User Guide-1.pdf.

Statewide Assessment

Federal law requires that schools be held accountable for educational results so that each child can meet his or her academic potential. State assessments are to be given to determine whether schools have been successful in teaching children the knowledge and skills for their enrolled grade as defined by the state content standards known as the Texas Essential Knowledge and Skills (TEKS) which is located on the TEA website http://www.tea.state.tx.us/index2.aspx?id=6148. Texas has developed assessments that meet these federal requirements. Children who receive special education and related services will take the appropriate state assessments which are based on grade-level content as required by federal law.

If the ARD committee determines that accommodations are necessary for a child to participate in assessments, the IEP must contain a statement of appropriate accommodations. Accommodation information is available at http://www.tea.state.tx.us/student.assessment/accommodations/. For those children who take alternate assessments based on alternate achievement standards, the IEP must contain a description of benchmarks or short-term objectives as part of the child's annual goals. If the child does not meet the expectations set by the ARD committee on the statewide assessment, the IEP must include a statement regarding how the child will participate in an accelerated instruction program or intensive program of instruction.

For a child taking an alternate assessment based on modified academic achievement standards, the ARD committee may elect to include annual goals, benchmarks, or short-term objectives in the IEP to assist in monitoring the child's progress.

If the ARD committee determines that the child must take an alternate assessment instead of a particular state or districtwide assessment, a statement must be provided regarding why the child cannot participate in the regular assessment. In addition, the ARD committee must provide a statement indicating why the particular alternate assessment selected is appropriate for the child.

More information can be found on the TEA's ARD committee resources webpage is located at http://www.tea.state.tx.us/student.assessment/ard/.

Special Education, Related Services, and Supplementary Aids and Services

The ARD committee decides what services are needed to:

- enable the child to advance appropriately toward attaining the annual goals,
- be involved and make progress in the general curriculum (including participation in extracurricular and nonacademic activities), and
- be educated and participate with children without disabilities.

The IEP must include a statement of needed special education, related services, and supplementary aids and services to be provided to your child or on behalf of your child. These services must be based on peer-reviewed research to the extent practicable.

Additionally, the IEP must contain a statement of any needed program modifications and supports for school personnel that will be provided. The ARD committee determines the length of your child's school day.

Supplemental Areas to be Addressed for Children with Autism

For a child with autism, there are 11 strategies that must be considered, based on peer-reviewed, research-based educational practices to the extent practicable. When needed, these strategies must be addressed in the IEP. When not needed, the IEP must include a statement to that effect and the basis upon which the determination was made. The additional strategies the ARD committee must consider are:

- extended educational programming,
- daily schedules reflecting minimal unstructured time,
- in-home and community-based training, or viable alternatives,
- positive behavior support strategies,
- futures planning,
- parent/family training, and support,
- suitable staff-to-child ratio appropriate to identified activities,
- communication interventions,
- social skills supports and strategies,
- professional educator/staff support, and
- teaching strategies based on peer-reviewed, research-based practices.

More information can be found at http://www.txautism.net/.

Extended School Year Services

The ARD committee decides if your child qualifies for ESY services. The decision is based on formal and/or informal measures. Eligibility for ESY services is not limited to certain categories of disability. These are individualized decisions based on the criteria for ESY services and not a "one-size-fits-all" decision.

Your child qualifies for ESY services if, in one or more critical areas addressed in your child's current IEP, your child has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be regained within a reasonable period of time. The term "severe or substantial regression" means that the child has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services.

A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following occurrences to the child during the first eight weeks of the next regular school year:

- removal to a more restrictive placement,
- a significant loss of skills needed to progress in the general curriculum,
- a significant loss of self-help skills requiring more direct services and support,
- loss of access to non-educational, community-based independent living skill instruction or an independent living environment as a result of losing skills, or
- loss of access to on-the-job training or productive employment due to losing skills.

If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results or reasonably may be expected to result, in immediate physical harm to the child or to others, ESY services may be justified without consideration of the period of time for regaining such skills. In any case, the period of time for regaining a critical skill must not exceed eight weeks.

If the ARD committee determines that your child is in need of ESY services, then the IEP must also include goals and objectives for ESY services from your child's current IEP. If your school does not propose to discuss ESY services at your child's annual ARD committee meeting, you may request that your child's ARD committee discuss eligibility for ESY services.

Transition

Transition services are a coordinated set of activities designed to help the child move from school to post-school activities. Those activities begin by age 14 with an examination of state transition planning. By age 16, or younger if determined appropriate by the ARD committee, the IEP must include appropriate measurable post-secondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills. The IEP must include transition services needed to assist the child in reaching those goals.

Your child must be invited to the ARD committee meeting when transition services will be discussed. Additionally, to the extent appropriate, with your written consent or with the written consent of the student who is an adult, the school must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

The ARD committee must make decisions regarding transition goals and services based on age-appropriate transition assessments. The transition goals and services in your child's IEP must be updated annually. Additional information regarding transition can be found at http://www.transitionintexas.org.

Placement

The IDEA guarantees that your child will be educated in the LRE. This means that, to the maximum extent appropriate, your child must be educated with children who do not have disabilities. Removal of your child from the regular educational environment may only occur if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

"Supplementary aids and services" means aids, services, and other supports that are provided in regular education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate.

Placement refers to the educational program on the continuum of placements (i.e., regular classes, special classes, special schools, homebound instruction, instruction in hospitals and institutions). Placement does not refer to the specific physical location or site where the services will be delivered. The ARD committee determines the educational placement based on the child's IEP.

Graduation

The state's goal is that all Texas children finish high school with the skills designed to meet their unique needs and prepare them for further education, employment, and independent living. Because graduation is a change of placement, the ARD committee decides whether a child has met graduation criteria.

Additional information regarding graduation requirements can be found at http://www.tea.state.tx.us/index2.aspx?id=2147498359.

There are four ways in which a child receiving special education services may graduate from high school and receive a regular high school diploma.

1. Your child may graduate and receive a regular high school diploma if he or she has satisfactorily completed the state or local (whichever is greater) required standards in the TEKS and credit requirements for graduation (under the recommended or distinguished achievement high school program curriculum requirements) applicable to children in general education, and if the child has performed satisfactorily on the required state assessments.

2. Your child may graduate and receive a regular high school diploma if he or she has satisfactorily completed the state or local (whichever is greater) required standards in the TEKS and credit requirements for graduation (under the minimum high school program curriculum requirements) applicable to children in general education, including participation in required state assessments. The ARD committee must determine whether satisfactory performance on the required state assessments is necessary for graduation.

   When a child graduates in one of the manners described above, the graduation ends the school's obligation to provide services to the child. An evaluation is not required, but the school must give the child a summary of performance.

3. Your child may graduate and receive a regular high school diploma if he or she has satisfactorily completed the state or local (whichever is greater) required standards in the TEKS through courses that contain modified content and has satisfactorily completed credit requirements for graduation under the minimum high school program including participation in required state assessments. The ARD committee must determine whether satisfactory performance on the required state assessments is necessary for graduation. Your child must also successfully complete his or her IEP and meet one of the following conditions: full-time employment, mastery of specific employability skills, or access to services which are not the legal responsibility of the school. An evaluation must be provided and included with a summary of performance.

When your child graduates in this manner, your child may be able to return to school and receive services through the end of the school year in which he or she reaches age 22. If your child seeks to return, the ARD committee must determine the appropriate educational services for your child.

4. Your child may graduate and receive a regular high school diploma if he or she no longer meets age eligibility requirements (i.e., "ages out") and has completed the requirements of his or her IEP. Your child who is receiving special education services and who is 21 on September 1 of a school year is eligible for services through the end of that school year or until graduation, whichever comes first. The child who graduates due to aging out and meeting his or her IEP requirements must be given a summary of performance.

If the ARD committee determines that your child is unable to participate in physical activity due to disability or illness, your child may be allowed to substitute one credit in English language arts, mathematics, science, or social studies, or one academic elective credit for the physical education credit required to graduate. A credit allowed to be substituted for this reason may not also be used by the child to satisfy a graduation requirement other than completion of the physical education credit.

Discipline

School officials may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who has violated the school's code of student conduct. As a general rule, the consequences stated in the school's code of student conduct apply to all children, including children with disabilities.

There are, however, special rules and limitations that may apply to a child with a disability if the school proposes to remove the child from his or her current placement for more than 10 consecutive school days or if the child has been subjected to a series of removals that constitute a pattern.

School officials may report to law enforcement authorities that a child, including a child with a disability, is suspected of committing a crime. In some instances state law requires school officials to make a report to law enforcement. Schools that report a suspected crime to law enforcement officials must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities, provided that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA). The FERPA assures the confidentiality of personally identifiable information contained in education records. Under the FERPA, this type of information (such as the child's status as a child receiving special education services) can only be released with parental consent, except in certain very limited circumstances. Therefore, in most instances, in order to transmit such records to law enforcement authorities, parental consent will be required. Additional information regarding discipline and children in special education can be found at http://www.tea.state.tx.us/index2.aspx?id=2147497414.

Disciplinary Removals from Placement

School officials may remove your child from his or her current educational placement if your child violates the code of student conduct. This removal can be to an appropriate interim alternative educational setting (IAES), another setting, or suspension for not more than 10 consecutive school days (to the extent that the disciplinary measure is applied to children

without disabilities), and, for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change in placement).

Short-term Removals for 10 Consecutive Days or Less

Disciplinary removals for 10 consecutive school days or less do not trigger the requirement to hold an ARD committee meeting or conduct a manifestation determination. The school is only required to provide services to your child during a short-term removal if it provides services to a child without disabilities who is similarly removed.

Cumulative Removals Totaling 10 Days or More

School officials may order additional short-term removals (not more than 10 consecutive school days) in the same school year for separate incidents of misconduct, provided that these removals do not constitute a change of placement.

After your child has been removed for 10 cumulative school days in the same school year, if the current removal is not for more than 10 consecutive school days and is not a change of placement, the school must provide services so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP. School personnel must consult with at least one of your child's teachers to decide which services are needed.

Change of Placement

A removal of a child with a disability from his or her current educational placement is a change of placement if:

- the removal is for more than 10 consecutive school days, or
- the child has had a series of removals that constitute a pattern because:
    - the removals total more than 10 school days in a school year,
    - the child's behavior is largely similar to the child's behavior in past incidents that resulted in the series of removals, and
    - other factors like the length of the removals, the total amount of time the child has been removed, and the proximity of the removals to one another.

The school will determine on a case-by-case basis whether a pattern of removals amounts to a change of placement. You may challenge the school's decision about this through a due process hearing or judicial proceeding.

If the school proposes a removal that will constitute a change of placement due to your child's violation of the code of student conduct, school officials must notify you of that decision and provide you with a copy of the Notice of Procedural Safeguards. This must be done on the date on which the decision is made to change the child's placement. In addition, the school must arrange for a meeting of the ARD committee to determine whether the conduct was a manifestation of the child's disability.

Manifestation Determination Review

Within 10 school days of any decision to change the placement of your child due to a violation of the code of student conduct, the ARD committee must meet and conduct a MDR.

When conducting an MDR, the ARD committee must review all relevant information in your child's file, including the IEP, any teacher observations, and any relevant information provided by you. You may present any relevant information at this time for the ARD committee to review when making the determination whether your child's conduct is a manifestation of his or her disability.

The ARD committee must then answer both of the following questions:

- Was the conduct in question caused by, or did it have a direct and substantial relationship to, your child's disability?
- Was the conduct in question the direct result of the school's failure to implement the IEP?

When Conduct is a Manifestation

If the ARD committee answers "yes" to either of the above questions, the conduct is a manifestation of the child's disability. In that event, the committee must either:

- conduct a functional behavioral assessment (FBA), unless the school had conducted an FBA before the behavior that resulted in the change of placement occurred, and implement a behavior intervention plan (BIP), or
- if a BIP is already in place, review the BIP and modify it as necessary to address the behavior.

In addition, if the committee concludes that your child's conduct was caused by the school's failure to implement the IEP, the school must take immediate steps to remedy the deficiencies.

If the ARD committee concludes that your child's behavior is a manifestation of his or her disability, the committee must return your child to the placement from which your child was removed unless:

- you and the school agree to a change of placement as part of the modification of the child's BIP, or
- your child's violation of the code of student conduct involves one of the "special circumstances" described below.

When Conduct is Not a Manifestation

If the ARD committee concludes that your child's conduct was not a manifestation of his or her disability, school personnel may discipline your child in the same manner as other children, except appropriate educational services must continue.

The child's ARD committee will determine the IAES in which the child will be served. In Texas, the IAES may be a disciplinary alternative education program.

Special Circumstances

School personnel may remove your child to an IAES for up to 45 school days without regard to whether the behavior is a manifestation of his or her disability in cases where your child:

- carries or possesses a weapon at school, on school premises, or at a school function,

- knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function, or
- has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The child's ARD committee will determine the IAES in which the child will be served.

Expedited Due Process Hearing

If you disagree with a decision regarding placement in an IAES or manifestation determination, you may request a due process hearing. While the hearing is pending, unless you and the school agree otherwise, your child must remain in the IAES selected by the ARD committee until the hearing officer decides the case or the period of removal to the IAES concludes, whichever occurs first.

Due process hearings concerning disciplinary placements have shortened timelines. This means that the resolution meeting must be held within 7 calendar days and the hearing must be held within 20 school days of the request. The hearing officer must make a decision within 10 school days after the hearing.

The school may also request a due process hearing if the school wants to challenge a child's return to school after the ARD committee has determined that the child's conduct was a manifestation of his or her disability.

Child Not Yet Eligible

If your child has not been determined eligible for special education and engages in behavior that violates the code of student conduct, your child is entitled to the protections provided in the IDEA if the school had knowledge that your child had a disability before the behavior occurred. The school has knowledge if before the behavior occurred:

- you expressed concerns in writing to supervisory or administrative personnel or to your child's teacher that your child needs special education and related services,
- you asked for an evaluation of your child, or
- school personnel have expressed specific concerns about a pattern of your child's behavior to the special education director or other supervisory personnel of the school.

The school is not considered to have knowledge if:

- you refused to allow the school to evaluate your child, refused special education services for your child, or revoked your consent for the continued provision of special education services, or
- your child has been evaluated and determined not to be eligible for special education services.

If the school does not have knowledge that your child had a disability prior to taking disciplinary action, your child will be subject to disciplinary measures that apply to children without disabilities who engage in the same type of behavior. You may request an evaluation of your child for possible special education services during the time when your child is being disciplined. If this occurs, the school must complete the evaluation in an expedited manner. Until the evaluation is completed, your child remains in the placement determined by the school, which can include suspension or expulsion.

Notice of Procedural Safeguards

A copy of the Notice of Procedural Safeguards must be provided to you at least once a year and when any of the following circumstances occur:

- upon initial referral or your request for evaluation,
- upon receipt of the first state complaint in a school year,
- upon receipt of the first due process hearing complaint in a school year,
- on the day a decision is made to make a disciplinary change of placement, and
- upon your request.

For a complete explanation of your rights, see the Notice of Procedural Safeguards on the internet. Copies are available in English and Spanish at the following site http://framework.esc18.net/ or you may request a copy from the school counselor or the school's special education department.

Dispute Resolution

From time to time, disputes may arise relating to the identification, evaluation, educational placement, or the provision of a FAPE to your child with a disability. It is the policy and intent of the TEA to encourage and support the resolution of any dispute at the lowest level possible in a prompt, efficient, and effective manner.

The possible options for resolving disputes include, but are not limited to:

- meetings of your child's ARD committee,
- meetings or conferences with your child's teachers,
- meetings or conferences, subject to local school policies, with campus administrators, the special education director, the superintendent, or the board of trustees,
- requesting mediation through the TEA,
- filing a special education complaint with the TEA, or
- requesting a special education due process hearing through the TEA.

Additional information regarding dispute resolution may be found on the TEA website at http://www.tea.state.tx.us/index2.aspx?id=2147497560.

Mediation

You or the school may ask the TEA to assign a mediator to help the parties work toward a solution to a disagreement regarding your child's educational program. Mediation is provided at no cost to you or the school.

Mediation is a voluntary process, meaning that both parties must agree to participate in mediation. The focus of mediation is on solving a disagreement and arriving at a solution that meets the needs of your child. The TEA has additional information regarding mediation at http://www.tea.state.tx.us/index2.aspx?id=5087.

A written request for mediation must be mailed, hand-delivered or faxed to:

Texas Education Agency
Office of Legal Services
1701 North Congress Avenue
Austin, Texas 78701-1494
Telephone: (512) 463-9720
Fax: (512) 463-6027

Complaint

If you believe that special education requirements have not been followed by a public agency, you may file a special education complaint with the TEA. "Public agency" includes the TEA, a local educational agency (LEA), an educational service agency (ESA), a nonprofit public charter school that is not otherwise included as an LEA or ESA and is not a school of an LEA or an ESA, and any other political subdivision of the state that is responsible for providing education to students with disabilities. The complainant (the person filing a complaint) must sign the complaint and must provide a copy at the same time to both the TEA and to the public agency. The complaint must include the violations the complainant believes have occurred and must include the facts on which the complaint is based.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the TEA. The TEA has additional information regarding filing complaints at http://www.tea.state.tx.us/index2.aspx?id=2147498481.

Due Process Hearing

If you and the school have a disagreement about the identification, evaluation, educational placement of your child, or the provision of a FAPE to your child, you may file a request for a due process hearing with the TEA. You must request a due process hearing within one year of the date you knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply if you were prevented from requesting the hearing because of specific misrepresentations by the school that it had resolved the problem, or because the school withheld information that was required to be provided.

The TEA has additional information regarding the due process hearing program at http://www.tea.state.tx.us/index4.aspx?id=5090.

The TEA provides due process hearing request forms in English and Spanish at http://www.tea.state.tx.us/index4.aspx?id=5090.

Additional Assistance

For a complete listing of the definitions of acronyms found in this document, visit http://www.texasprojectfirst.org/AcronymsAD.html and for additional information, visit http://www.tea.state.tx.us/index2.aspx?id=2147491399.

Appendix A
Timeline | Child-Centered Educational Process

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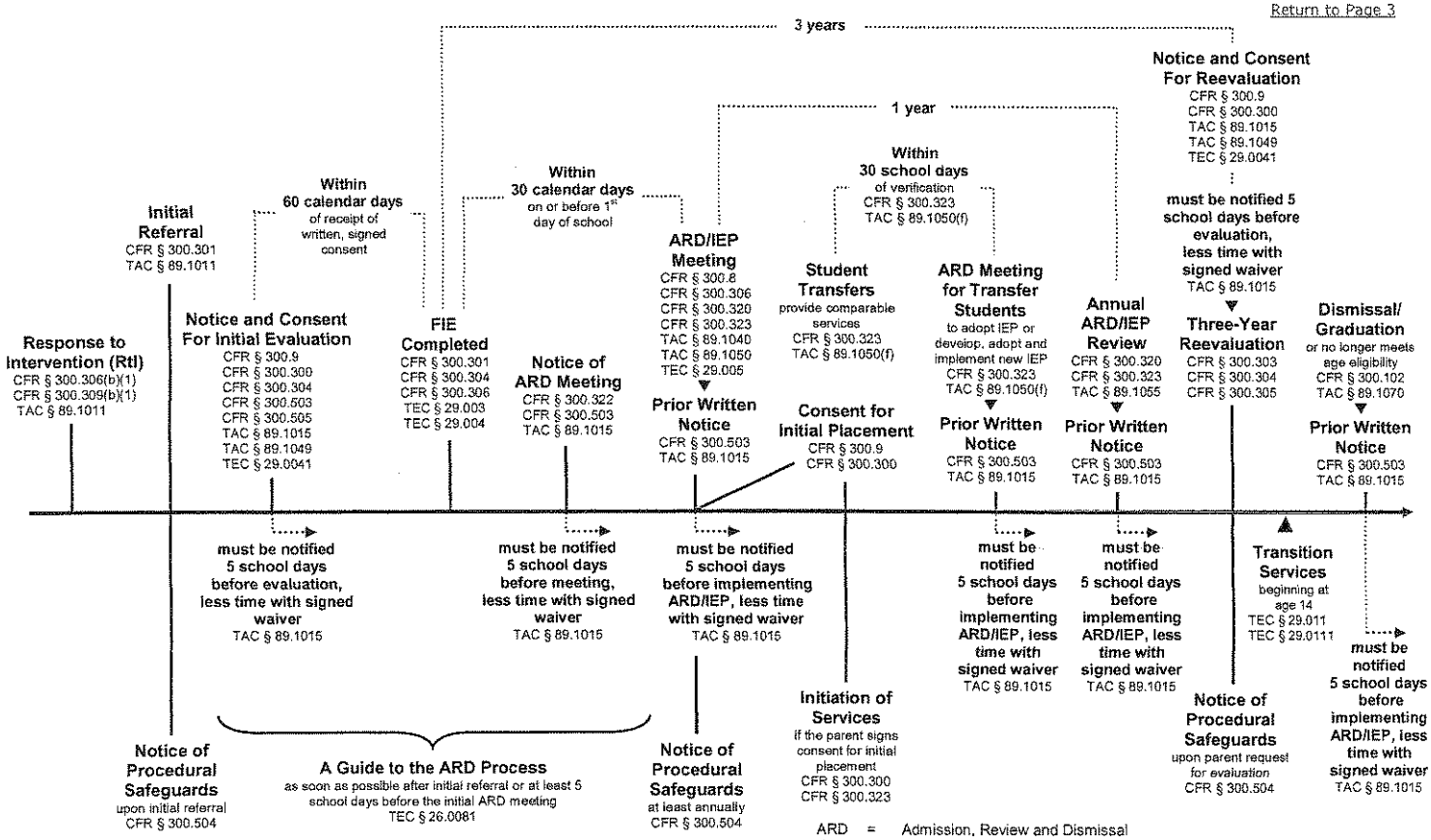

ARD = Admission, Review and Dismissal
CFR = Code of Federal Regulations (Implementing United States Code)
FIE = Full and Individual Evaluation
IEP = Individualized Education Program
RtI = *Response to Intervention*
TAC = Texas Administrative Code (Commissioner's Rules)
TEC = Texas Education Code (State Law)
USC = United State Code (Individuals with Disabilities Education Act)